

PORT DISTRICT OF SOUTH WHIDBEY ISLAND

Minutes of the Public Hearing:
Surplus 14.04 Acres of Upland Property at
Possession Beach Waterfront Park
November 17, 2010
Clinton, Washington

Commissioners Present: Geoff Tapert (Freeland), Chris Jerome (Langley) and Curt Gordon (Clinton)

Others Present:

Port Staff: Ed Field (Port Manager), Dane Anderson (Port Finance Manager), and Molly MacLeod-Roberts (Port Clerk); Brian Kelly (South Whidbey Record) and Pat Powell (Whidbey-Camano Land Trust) **Clinton Residents:** Clyde Monma, Marilyn Klansnic, Bruce Buls, Richard Engstrom, Eric Wiechmann, Nancy Wiechmann, Doug Struthers, Michael Farrens, Marcia Monma, Mikkell Hustad, Mike Seymour, Maggie Seymour, Leslie Saelens, Don Hoffler, Helen Hoffler, Carl Robinson and Will Black.

MEETING CALL TO ORDER: The Public Hearing on the Surplus of 14.04 acres of upland property at Possession Beach Waterfront Park was convened by the Board of Commissioners on November 17, 2010, in the Meeting Room at St. Peter's Lutheran Church located at 6309 Wilson Place in Clinton, WA. Commissioner Geoff Tapert (President) called the Hearing to order at 7:00 p.m., followed by the Pledge of Allegiance.

PUBLIC HEARING AND COMMISSION ACTION: As announced, proposed Resolution No. 10-10: Declaration of Surplus for 14.04 acres of upland property on the hillside and ridge above Possession Beach Waterfront Park (**EXHIBIT A**) was presented for public hearing and Commission action. Gordon reminded all present that comments should be limited to the topic of surplus of the property.

Clyde Monma, Vice President of the Friends of the Dorothy Cleveland Trail (FOTDCT) read aloud the letter prepared by the group with 4 attachments (**EXHIBIT B**). Monma had read the same letter aloud at the regular Port meeting on November 9, 2010. The letter described FOTDCT as "...a South Whidbey community group organized to protect, maintain and advocate for the Dorothy Cleveland trail for community and educational uses." The letter claimed to serve 2 purposes: 1) to point out several very important factual misstatements made by Port Commissioners to back up their proposal to surplus upland park lands, and 2) to propose concrete steps for moving in a better direction.

The letter claimed there were flaws with the proposal and listed them as follows: 1) the Port does not budget or spend any funds on the uplands park, 2) RCO doesn't encumber any of the property west of Franklin & Possession Roads, 3) the boundary line adjustment FOTDCT proposes is a simpler and less costly approach to survey, surplus and sell the uplands park, 4) the Port doesn't need to own the bottom half to protect its water supplies because any agreement to acquire the uplands would include a permanent easement for the Port water infrastructure, 5) splitting the property as the Board suggests still leaves the Port responsible for the business of an upland park and 6) FOTDCT does not believe the Port's decision is in the best interest of the public they serve. There has been consistent, long-standing and significant public opposition to the various proposals made by the Port related to the Trail.

FOTDCT proposed the following: The property should be split as depicted in Attachment B and Parcel 1 should be surplussed. Formal discussions should begin with the Port, South Whidbey Parks & Recreation

District (SWPRD) and WCLT for acquiring the rights to Parcel 1 to form the Dorothy Cleveland Park. The FOTDCT would provide volunteer support and help raise funds for the Park, and work toward finding a permanent steward to take over the park (such as SWPRD or WCLT). The letter ended with a request that the Port "...put all plans related to the uplands parks on hold until the items in this letter are fully resolved."

Monma said, "I'd be glad to hear any rebuttals to these statements. I think it's incumbent upon you to give a reason for doing this, since you are basically destroying the park."

Marilyn Klansnic said, "I submit that you just leave the park alone. We bought our (Lupine Lane) property in 1999, and shortly thereafter discovered this fabulous Trail, and couldn't believe our good luck that it was so close to us. We've enjoyed it for a number of years now, and can't believe now that you won't just leave it alone "as is." It's a beautiful destination – not just for the people on the Island, but for people that come to the Island to use. I submit that you leave it "as is."

Bruce Buls said, "I also want to speak on behalf of the Trail. As my wife Marilyn said, we discovered the Trail when we bought our property in 1999. I used to be on the Board of the Washington National Parks Fund, I belong to the Mountaineers, I spend a lot of time in the mountains, and this Trail is a great trail. There are not many trails like it, and certainly not on the Island. It is steep – it goes 400 ft. from sea level to the top of the ridge in about ¼ mile, so it's kind of a butt-kicker, which is a great thing – it's a good workout. The Trail is well-designed and well-built with lots of switchbacks, some stairs, a little bridge and benches along the way. As I understand, the Port spent \$25,000 to build the Trail, and AmeriCorps volunteers spent a lot of effort to build the Trail. Now if surplussing this property threatens the Trail, I don't get it. This is a jewel of a park with a trail, and if what you're doing threatens what your predecessors did in buying and developing the property and trail...what's the motivation for threatening it? For getting rid of it? Money? I just don't understand. In an email exchange between Monma and Jerome regarding where the property division would be, Jerome said there was no compelling reason to revisit that because the Commission had already decided. I say there is no compelling reason to do any of it. The Trail and the Park is a jewel – you should be proud of it. It was we the public that paid for it. We paid for the Trail and we paid for the Park and we love it. I don't see any compelling reason to surplus it and expose it to development that would block out public access to the Trail. You've declined to issue any kind of easement or protection for the Trail, so any future buyer would not be encumbered as to the use of property. So AT&T could buy it and put up a cell tower (which is an ill-advised project in the first place), or somebody could buy it as a private property and put a McMansion up there and close it off to the public. You guys said if we want to keep it as a park then fine, buy it. Well, we've already bought it and we don't want to sell it."

Doug Struthers thanked FOTDCLT, "especially Clyde Monma and Mike Seymour for their tireless efforts to save this beautiful Trail." Struthers read aloud a prepared statement explaining how he and his family live on the edge of the forest at Possession and how much they enjoy and treasure the Trail and sharing his memories of times spent there with his now 15-year old son. He referred to the forest and the trail as "wonderful healers and saviors," and asked, "Are these wonderful healers and saviors going to be traded away for commercial interests? Or are they going to be used to meet current spending expenses? Or are we just going to divest ourselves of the responsibilities and efforts to keep these places for ourselves and for our children?" He stated that he had attended the Port's meetings in recent months to try and resolve these issues and decide what "we as a community should do." He said, "Mostly it's been civil discourse, with a few emotions to indicate the public's passion and feelings about this place. I really admire democracy in America that we all enjoy and see how it works at a local level, but I sincerely hope for our children's sake that we will find a conscience to preserve and protect these assets for them and forsake the temptation to trade them for short-term benefit." In closing, Struthers said, "I believe that all

of know that saving the Trail is the right thing to do for our children and I would just simply ask you to join us in our effort to try and preserve that Park.”

Nancy Wiechmann said, *“I’m here tonight to speak on behalf of the Trail; not just from the standpoint of it being a recreational gem, but an ecological gem as well. I am a passionate conservationist and I have a degree in Environmental Conservation from the University of Colorado. I’ve worked in conjunction with the Mexican government to develop a conservation program, I’ve worked with the National Marine Fisheries Service, worked for Biometrics doing Environmental Impact Statements, I’m a member of the Whidbey Island Audubon Society, a licensed veterinary technician, etc. During part of the 17 years I worked in Seattle, I was the Wildlife and Marine Mammal Rescue person for South Whidbey Island. It was brought to my attention that the Whidbey-Camano Land Trust (WCLT) was interested in finding out about what species of birds and wildlife use the habitat encompassed by the Dorothy Cleveland Trail.”* As a result of WCLT’s interest, Wiechmann put together a letter describing the Dorothy Cleveland Trail Flora & Fauna (**EXHIBIT C**). She said, *“Basically, this particular piece of property is vital and vibrant from an ecological standpoint because we’re blessed to be in the middle of the one of the greatest and largest migratory flyways in North America and there are literally millions of birds that fly over and stop to rest on the Island.”* The letter listed various species of birds and animals that use the area. She concluded, *“I’d just like to put this forward in the hopes that you would also consider that this particular piece of property has an inherent value and it shouldn’t just be parceled out and divided and sold at auction to the highest bidder – that we do in fact have an obligation to conserve and preserve the habitat there as well.”*

Mikkel Hustad said he had served as a member of the Citizen’s Advisory Group for the Port’s current Comprehensive Scheme. He said, *“It’s my impression that the Commissioners have been worked into a corner because the Comp Plan has some clear guidelines as to how to administer resources in Langley for the sake of South Whidbey, and part of that included marine access as well as environmental stewardship and economic development. Those were the 3 overriding goals in the Comp Plan. It’s my impression that because of the opposition to improving and upgrading the Dorothy Cleveland Trail and adding parking to make it more accessible, it’s not possible for the Port to continue to manage that property. So, it comes to the issue that it is surplus. If in fact that is the case, my question is: Do the same guides and principles (marine access, environmental stewardship & economic development) involved in the Comp Plan...are they also in force when in consideration for the sale of property, or is that a different situation entirely? Is it just open to the person who meets the price (highest bidder) or do the issues of stewardship, access and economic viability also play a part in the decision as to how, if and who purchases the property?”*

Pat Powell (Executive Director of WCLT) said, *“I’m here to speak on behalf of the WCLT to oppose surplussing the 14-acre property, because of its critical importance to the healthy functioning of the near-shore and the resulting impact on the marine life, including salmon runs. In addition, the proposed surplus action in our mind directly conflicts with the Port’s Comprehensive Plan in dozens of places. We ask that you delay action or don’t vote in favor of this so that additional discussion and analysis can take place. The WCLT would very much like to have more conversations about the future of this important ecological property, and it’s one that is directly related to the health of the shoreline.”* Powell went on to briefly highlight the environmental importance of the property. She said, *“It (this near-shore reach) has been identified as one of the highest priorities for protection on Whidbey Island. Right now it is making its way through the Technical Advisory Group of the Advisory for the Salmon Recovery Plan. This marine shoreline contains a stretch of naturally functioning sand and gravel beach, which is adjacent to vegetative clumps and eelgrass beds. Possession Sound is the primary migration corridor for Snohomish and Stillaguamish salmon and trout runs, and this property is intricately connected to the beach and the near-shore, which the Comp Plan talks about that being the highest priority. Ecologically we now know you can’t separate one from the other and keep the health of our systems. The property includes steep*

and unstable forested bluffs that provide important functions for the near-shore, including feeding sediment and nutrients into the wetland, the beach and the near-shore area. The property is also geologically unstable, which is not very good for homes, but is incredibly good for salmon and marine life. It also provides a scenic backdrop to the road down to the beach recreation area. It is very close to Possession Point State Park and there is definitely an opportunity to connect the two properties to form a much a larger ecological area.

*I want to commend the Port for a most excellent Comp Plan that was set forth to guide your actions until 2013. I'm a planner by background; I was part of the Port of Coupeville's Comp Plan and they used your plan as an example of what they ended up with, and that was a balance of economic development with the environmental importance of Whidbey Island. Your Comp Plan took years to develop and it had a lot of community input and scrutiny, and there are many actions that appear to be violated if you do surplus this. The Port's Mission Statement in the Comp Plan that is to guide your actions is: **To enhance the economic well-being of the community and increase public access to marine areas while respecting the unique rural character and environment of South Whidbey Island.** This surplus property is definitely part of that unique rural character and definitely the environment and the health of the shoreline. If the Port is going to change direction from its existing Comp Plan's mission of balancing economic development with respect to the environment and rural character, and instead go to one of simply encouraging economic development, then it needs to go through the whole comprehensive planning effort again and get the community's input to see if that is what your constituents really want you to do. The goals and objectives in the existing Comp Plan state the Port will **concentrate its efforts over the next six years in the areas of economic development, environmental stewardship, marine access and recreation, etc.** and getting rid of this important property is definitely not promoting environmental stewardship. Under Economic Development, the Plan also lists a Goal 1 Objective is: **Increase the economic opportunities in our community that emphasize the following activities: Marine Industry, Tourism, etc.** The protection by the Port of this property safeguards the health of our marine life and salmon, which is critical to the marine and tourism industries. A Goal 2 Objective is: **Seek opportunities to promote public shorelines and recreational areas...** Again, the property protects the function of the near-shore and provides non-motorized trail recreation. Under the Environmental Stewardship section of the Plan, it talks about the fact that the Port has to steward its existing facilities and the waters of Puget Sound. Again, this property is really important to the quality of Puget Sound and our near-shore. Goal 1 Objectives include: **Seek opportunities to achieve or influence the enhancement of the unique South Whidbey marine environment, Develop opportunities for low-impact, non-motorized tourism and recreation, and Educate the public concerning the importance of the stewardship of these resources, none of which are adhered to with this surplus proposal.** The Comp Plan also identifies the support for the Possession Point Estuary Project and the Island County Marine Resources Committee. The upland you are surplussing is integral to the marsh and tideland ecosystem – you can't disconnect the upland without adversely affecting the wetlands and near-shore.*

I again urge you to not surplus this property and to work with the community and the WCLT to find better ways to address the issues you might have.

Marcia Monma said FOTDCT had an email list and 125 friends on their Facebook page, and she said she had petition signatures (not provided to the Port). Using her phone, she read aloud emails she claimed to have received from individuals opposed to the Port putting up a cell tower or declaring the property surplus or making any changes to the property (not provided to the Port).

Carl Robinson said, *"I love animals, too, and I am also a tree hugger. We live on 27 acres, of which more than 20 have been under forest stewardship for a number of years. I also have a cell tower on my property with a recent addition of an osprey that built its nest on top of that cell tower. My property also has an eagle's nest and is home to red-tailed hawks. I don't know how many of you were at the meeting*

when Chief Beck of the Island County Fire District #3 submitted the blackout map of those areas that aren't serviced by emergency crews because of the lack of communications. If you have a heart attack in one of those areas you won't be able to call for help from a cell phone. If you own a home in that area and want to sell it in the future, you'll probably have to disclose that the zone your house is in is not serviced by emergency personnel because of that lack of cellular transmissions that prevents communications. I seriously doubt that the salmon run is going to be affected by a cell tower. I have previously submitted photographs of a particular site on my property and the cell tower itself is so treed now that I doubt most people would even recognize it. Most people don't even know it's a cell tower, and it's right off the public highway. Obviously, my interest is not only in the cell tower, but also in preserving the trees. I also want the safety of those citizens living on the south end of Whidbey Island to be primary. It doesn't do you any good to have a nice beautiful trail if all of a sudden you have to call for help and you can't get any.

Don Hoffer said, *"Ever since the Dorothy Cleveland Trail was built, we love it and walk it continually. We don't see why you're trying to take it away from us when we're the taxpayers who helped pay to buy and build it in the first place. You came up with a great idea for that trail from the beach and now you're going to renege on it. We don't think it's fair and we are the taxpayers that are footing the bill. I have a feeling you need a lot of money for another project, a more important project and I was wondering if it was the Langley Marina. Amen.*

Helen Hoffer said, *"We don't want this spoiled. We have 15 acres and it's a wildlife refuge that is certified by the National Wildlife Federation, and we love to walk through our property and down the Trail to the beach. We do that all the time, so we don't want to lose out on that opportunity and all the wildlife as well.*

Tapert asked if anyone else wished to speak, and no one did.

ACTION: A Motion was made by Gordon and seconded by Jerome to close the Public Hearing. The Motion passed unanimously.

COMMISSIONERS' COMMENTS ON THE PROPOSED RESOLUTION: Jerome said there are several issues that come to mind. In trying to decide whether the property should be surplussed or not, the Commission must first determine whether it serves a legitimate Port purpose and whether the asset is better used for something else that serves a Port purpose. He repeated his statement that the Port should not be in the business of upland parks, and added, "In my reading of the RCW's, that's a matter of law." A lot of tonight's discussion has been about keeping the property as a park, and the reason we got to this point where we are talking about surplussing it is that maintaining parks is not a Port function. If the property is to be a park, Jerome said it should be transferred to somebody whose job it is to maintain parks, and that cannot happen unless the Port surpluses the property.

Jerome agreed that the Port should balance its economic development mission with the other missions, but added, "When I read the Comp Plan, economic development is Goal #1." The question is: Where is that balance to be struck? The Port owns a lot of shorefront property that it stewards very well and the Port will continue to be a very good steward of that property, including the shoreline portion of Possession Park. The Port also has the legal obligation and taxpayer mandate to do something about economic development. If the Port surpluses and sells this property, the sale proceeds could be used to serve an economic development goal that Jerome doesn't believe this property serves.

Gordon said he agreed with most of what Jerome said and reiterated his belief that according to RCW 53.08.260, port districts are allowed to have upland parks only if necessary for marine access. That was one driver for this surplus discussion, and another was AT&T's request to lease a portion of the property

for a cell tower. Gordon noted that under the RCWs, one of the specified uses for port districts is to develop communications facilities, and it is actually a suggested use, along with economic development. In looking at the State statutes and the Port's Comp Plan and discussing a balance between environmental guidelines and economic development, Gordon concluded that the best-case scenario would be a transfer of funds from another agency or organization to the Port for ownership of the 14.04 acres. He disagreed with the view that since taxpayers bought the property and that they would have to buy it again. He likened it to the South Whidbey School District selling a portion of their bus parking lot for \$50,000 so the City of Langley could have a road extension the developer paid for. The School District owned the asset and the taxpayers voted for levies and bonds for school district purposes for years, so when an asset changes hands, those dollars need to be spent in the school district. Gordon said, "There could be a transfer of funds and there could be an actual sale (to FOTDCT, for example) since this is an illegal use for our port district to be undertaking at this point, and then possibly maintained...that would be the best of all worlds. In order to start that process, I don't believe there should be any suggested temporary or suggested encumbrance of that property – no liens, no specific easements, nothing, so the value of the property remains in the Port District for the sake of its constituents. He said the Board has done a good job. AT&T was in the fast lane and the Port put the brakes on and has given it time, held open public meetings, etc. and is still in the process. To him, the next step is surplussing the property so it can go forward as a park. He said, "I think it's time to start following the law. I don't think it's good use of the Port's assets to be maintaining this park."

Tapert said he wouldn't disagree with his fellow Commissioners. He noted that declaring the property as surplus does not mean the Trail or the public use of the Trail goes away. As Gordon said, surplussing is the necessary first step in transferring the ownership to another entity, whether it's the South Whidbey Parks & Rec District, Island County, or whomever, and all associated uses or easements go along with that entity because it doesn't appear to fit the Port's mission. Tapert said, "In my preferred vision, this upland property would become the ownership of someone else (entity or private owner) and there would be easements to protect the current Trail as it exists. As Pat Powell of WCLT noted, the property does have steep slopes and geologically hazardous or unstable areas, and Tapert pointed out those conditions prevent development or clear-cutting of the property. The question becomes public access and comes down to an easement. He said, "I don't think it's that hard of a sell to retain an easement over the Trail as it exists for public access." Tapert said he is in favor of retaining the Trail and he believes that most of it is within critical or geologically unstable areas, so it can't be built on or cleared. Even if a private owner made an offer, prior to the sale the Port could always request an easement be provided for the Trail. Tapert added, "But we're not there yet. This step of surplussing the property is just a step – it doesn't mean the Trail is gone and it doesn't mean that it is out of public ownership."

Tapert noted that the FOTDCT had presented a map (Attachment B to Exhibit B) showing their proposal for a boundary line adjustment that extended the property to be surplussed. He had no objection to that proposal but noted there would be details that would have to be worked out because there is infrastructure there that serves the lower portion of the park. Jerome was not in favor of it. He recalled that it would cost more to separate the property as FOTCDT proposed. Finance Manager Dane Anderson confirmed that was true, noting that the 27-acre parcel is currently divided into a 14.04-acre parcel and a 13.9-acre parcel by the Unregulated Segregation process. To change the boundary lines now would require a Boundary Line Adjustment, which requires a survey, etc. and would probably cost several thousand dollars (Anderson guessed it would be <\$10,000). Jerome pointed out that the Port's water supply would be included on the proposed extended property, and he personally felt that was an argument for the Port keeping that property. The last argument against the proposed boundary line adjustment is that the Port has no intention of changing the Trail on the lower portion, so there is no need to change the division of the property. Gordon agreed with Jerome, saying, "I don't want to give away the lower part at all. I think we have a responsibility to maintain ownership around that well and not just an easement. Adding that extension of the property will not add value to the upper piece, and although easements can be a good thing, there could still be potential encroachment and it wouldn't be responsible to give away the land around the well you own."

Tapert asked, "If we surplus the upper portion as currently divided, what is the role of the Commission to provide for an easement to protect the existing Trail?" Gordon didn't think they should discuss that because it wasn't necessary, but they could if he wanted to. Tapert's point was that since the property is already encumbered with critical areas, he doesn't see providing an easement as creating a significant cost difference. Gordon felt any discussion should wait until later and just leave it "completely on the table." Jerome pointed out that if the property is surplus and put up for sale, the Port is under no obligation to take the highest bid. They can consider factors other than the purchase price in determining who to sell the property to, such as public benefit.

Gordon reiterated that the Port has to surplus the property because it's a requirement even to save it as a park, and then we shouldn't negotiate until it's appropriate.

Tapert asked the Commission if they had any questions for the public, and he was the only one who did. He asked **Clyde Monma**, "What was your question?" **Monma** claimed that when he read his statement earlier, the Commission had promised to address the six items he listed as flaws with the Board's proposal to surplus the upper portion of the Dorothy Cleveland Trail. He said specifically to Jerome, "*I would like you to explain why any of these are valid arguments, particularly the one that says: **The Port has no business being involved in uplands parks, period. The fact is – those are uplands parks, so either keep the whole thing or divest yourself of the whole thing – you decide.***" Jerome explained that the law actually says the Port is allowed to have an upland park if it is necessary to maintain the marine access function, and in his view, having the Port's water supply on the property obligates the Port to keep that portion because the water supply is critical to the function of our marine facility on the shoreline.

Eric Wiechmann asked to speak. Tapert asked if anyone had an objection to hearing one more public comment, and no one did. **Wiechmann** said, "*If the goal is for the Port to keep it as a Trail, couldn't some words be put into the resolution to surplus it as long as the Trail is preserved?*" Tapert said that was his suggestion, but it did not have the Commission's support. However, if it is surplus, that doesn't mean the Port can't do that somewhere down the road prior to a sale.

ACTION: A Motion was made by Gordon and seconded by Jerome to approve and adopt Resolution No. 10-10 declaring as surplus a 14.04-acre parcel of property upland of the Possession Beach Waterfront Park. The Motion passed unanimously.

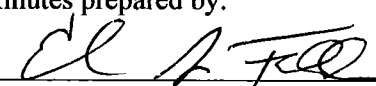
ADJOURNMENT: The meeting was adjourned at 8:05 p.m.

Approved:



Commissioner Geoff Tapert, Freeland

Minutes prepared by:



Edwin S. Field, Port Manager



Commissioner Chris Jerome, Langley



Commissioner Curt Gordon, Clinton

- Exhibit A: Resolution 10-10 (Surplus upland property at Possession)
- Exhibit B: FOTDCT Letter & Attachments dated 11/9/10
- Exhibit C: Letter from N. Wiechmann "Dorothy Cleveland Trail Flora & Fauna"